

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOSHUA A DICKENS,  
Plaintiff(s),

v.

STATE OF WASHINGTON,  
Defendant(s).

CASE NO. C23-5876-KKE

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND DISMISSING  
CASE WITH PREJUDICE

This matter comes before the Court on Magistrate Judge Brian Tsuchida’s Report and Recommendation (“R&R”) to dismiss the complaint with prejudice. Dkt. No. 9. Having reviewed the R&R, Plaintiff’s objections, and the rest of the docket de novo, and for the reasons explained below, the Court adopts the R&R and dismisses the complaint with prejudice.

**I. BACKGROUND**

On October 17, 2023, Plaintiff filed a complaint under 42 U.S.C. § 1983 against the “state of Washington, Kitsap County Superior Court” for violating his Sixth Amendment right to a speedy trial, “amendment 6.6.5.4” for deprivation of effective assistance of counsel, and First Amendment right to freedom of speech. Dkt. No. 5. Plaintiff, a pretrial detainee at Kitsap County jail, alleges that during the court dates for his ongoing criminal case he has been denied adequate legal assistance, denied the opportunity to speak on his own behalf, and that his attorney has made unwanted continuances on his behalf. *Id.* at 4. Plaintiff seeks \$2,500,000 “to restore my mental

1 health, and to compensate me for time, and suffering for the sixteen months of my incarceration.”  
2 *Id.* at 5.

3 Magistrate Judge Tsuchida entered an order to show cause granting Plaintiff until  
4 November 1, 2023, to show cause why the complaint should not be dismissed based on the ongoing  
5 criminal case and Defendants’ immunity from suit. Dkt. No. 8. Having not received a response,  
6 Magistrate Judge Tsuchida entered the R&R recommending the complaint be dismissed with  
7 prejudice. Dkt. No. 9. The Court received two requests from Plaintiff for an extension of time to  
8 respond. Dkt. Nos. 10, 11. To ensure Plaintiff had an opportunity to explain why the case should  
9 not be dismissed, the Court granted Plaintiff until December 27, 2023, to object to the R&R. Dkt.  
10 No. 12. On December 26, 2023, the Court received a document entitled “Order Showing Cause”  
11 from Plaintiff. Dkt. No. 13. Based on the current posture of the case, the Court will interpret  
12 Plaintiff’s filing as a timely objection to the R&R. This document reiterates the bases for  
13 Plaintiff’s civil rights claims but does not address either of the reasons for dismissal provided in  
14 the R&R. *See id.*

15 The Court finds the objections without merit and finds the case should be dismissed for the  
16 same two reasons provided in the R&R.

## 17 II. ANALYSIS

18 The R&R identifies two reasons this case must be dismissed under 28 U.S.C.  
19 § 1915(e)(2)(B), which requires the Court dismiss a case if the action “(i) is frivolous or malicious;  
20 (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a  
21 defendant who is immune from such relief.” The Court will address each of the R&R’s reasons  
22 for dismissing the case in turn.

23 First, the R&R recommends dismissing the case because each of Plaintiff’s allegations  
24 “flow from Plaintiff’s pending criminal prosecution and the Court cannot interfere with [] on-going

1 state criminal proceedings absent extraordinary circumstances under the *Younger v. Harris*, 401  
2 U.S. 37, 43–54 (1971), abstention doctrine.” Dkt. No. 9 at 2. *Younger* abstention applies if “(1)  
3 there is an ongoing state judicial proceeding; (2) the proceeding implicates important state  
4 interests; (3) there is an adequate opportunity in the state proceedings to raise constitutional  
5 challenges; and (4) the requested relief seeks to enjoin or has the practical effect of enjoining the  
6 ongoing state judicial proceeding.” *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018)  
7 (cleaned up). All four factors are met here. For factors one and three, Plaintiff admits there is an  
8 ongoing criminal proceeding (Dkt. No. 5 at 8) and that he can raise his concerns to the state court  
9 (Dkt. No. 13 at 1). For the second factor, criminal proceedings satisfy the “important state  
10 interests” requirement. *See generally New Orleans Pub. Serv., Inc. v. Council of City of New*  
11 *Orleans*, 491 U.S. 350, 365 (1989). Even though Plaintiff seeks monetary relief, the fourth factor  
12 is met because such relief has the practical effect of enjoining the state proceedings because “the  
13 district court [must] determine first whether violations of their civil rights have occurred in the  
14 course of the state [] proceeding, which would create a federal court judgment with preclusive  
15 effect over the ongoing state action.” *Herrera v. City of Palmdale*, 918 F.3d 1037, 1048 (9th Cir.  
16 2019). In sum, this Court agrees with the R&R that the Court should abstain from adjudicating  
17 Plaintiff’s claims pursuant to *Younger*.

18 Second, the R&R recommends dismissing the case because Kitsap County Superior Court,  
19 a state agency, has sovereign immunity under the Eleventh Amendment from Plaintiff’s suit, and  
20 judges are likewise immune from suit for acts performed in their judicial capacity. Dkt. No. 9 at  
21 2–3. This Court agrees. *See Bishop v. Snohomish Superior Ct.*, 569 F. App’x 497, 498 (9th Cir.  
22 2014) (citing *Simmons v. Sacramento Cnty. Superior Ct.*, 318 F.3d 1156, 1161 (9th Cir. 2003));  
23 *Manning v. Alaska State Ct. Sys.*, 76 F. App’x 790, 791 (9th Cir. 2003) (affirming dismissal of  
24 claims against the State of Alaska under the Eleventh Amendment and claims against a judge

1 because the complained of actions were “judicial in nature and within the clear bounds of his  
2 jurisdiction”); *see also Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986); *Hirsh v. Justs. of*  
3 *Supreme Ct. of State of Cal.*, 67 F.3d 708, 715 (9th Cir. 1995); *Feliciano v. Pierce Cnty. Jud. Sys.*,  
4 No. 3:23-CV-5310, 2023 WL 4349344, at \*1 (W.D. Wash. July 5, 2023). Because each Defendant  
5 is immune from suit, which cannot be cured by amendment, the complaint is dismissed with  
6 prejudice.

### 7 III. CONCLUSION

8 For the above reasons, the Court finds and ORDERS:

- 9 (1) The Court ADOPTS the Report and Recommendation. Dkt. No. 9.  
10 (2) The case is dismissed with prejudice.  
11 (3) The Clerk is directed to send a copy of this Order and the corresponding  
12 Judgment to Plaintiff.

13 Dated this 24th day of January, 2024.

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16 Kymberly K. Evanson  
17 United States District Judge  
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